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SALE OF INTOXICANTS TO INDIANS.

FEBRUARY 7, 1895.—Referred to the House Calendar and ordered to be printed.

Mr. CURTIS, of Kansas, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 6657.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 6657) to prohibit the sale of intoxicants to Indians, have had the same under consideration and recommend that it pass with the following amendments:

Amend the title so as to read "A bill to prohibit the sale of intoxicating liquors to Indians, providing penalties therefor, and for other purposes."

In line 5, page 1, insert the word "other" before the word "intoxicating."

In line 12, page 1, after the word "agent," add the following: "or any Indian, including mixed-bloods, over whom the Government, through its Departments, exercises guardianship."

The necessity for this legislation is clearly set out in the accompanying letters, which are made a part of this report.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 18, 1895.

SIR: Referring to office report of October 12, 1894, in response to a letter from Hon. Thomas Lynch, inclosing copy of House bill No. 6657, "To prohibit the sale of intoxicants to Indians," and asking for the opinion of this Department thereon, I have the honor to transmit herewith, in duplicate, copy of a letter of January 4, 1895, from the United States district attorney for the district of Washington, inviting attention to the fact that the courts of Washington and Oregon have decided that as section 6 of the act of February 8, 1887 (24 Stat., 388), provided for the admission to citizenship in the United States of Indians who have taken allotments under said act, such Indians are emancipated from the control of the Indian agents, and that it is not a violation of the law (section 2139 of the Revised Statutes, as amended by the act of July 23, 1892, 27 Stat., 260) to furnish such citizen Indians with liquor.

Said bill No. 6657 provides a penalty for the sale of intoxicating liquors to Indians who had taken allotments under the said act of 1887, and in that report it was suggested that as the tendency of the courts was to declare an Indian who had become a citizen by taking an allotment in severalty to be free to purchase intoxicating liquors, notwithstanding the fact that agents have been, under direction of Congress, maintained over such Indians by the Government, it would be absolutely necessary, if the Indian allottees are to be fully protected, that some such legislation as proposed in this bill should be enacted. Mr. Brinker, the district attorney for Washington, whose communication is referred to above, states that it has been frequently demonstrated (and it is not seen how demonstration is necessary) that the allotment of lands will not alone destroy the appetite for liquor nor render the Indian any less dangerous to himself and neighbors than he was before. As was stated in

the report from this office, above referred to, the making of allotments to Indians changes their status as to citizenship in the United States, but it does not change their character nor tastes, and that as much harm can come to an Indian allottee by the free use of intoxicating liquors as he could receive by such use as a member of the tribe.

In view of the fact that the courts have apparently unanimously decided that Indian allottees do not come under the provisions of existing law prohibiting the sale of liquors to Indians, I have the honor to recommend that Mr. Lynch be furnished with a copy of Mr. Brinker's letter and be advised by letter from the Department that it is thought that it would be very much to the benefit of the Indians of the United States if the said bill No. 6657 should be passed by Congress and should become a law.

I would also recommend that a copy of this report and of Mr. Brinker's letter be transmitted to the chairman of the Senate Committee on Indian Affairs, Hon. J. K. Jones, with the suggestion that it is desirable that said House bill No. 6657 should become a law.

Very respectfully, your obedient servant,

D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

OFFICE UNITED STATES ATTORNEY, DISTRICT OF WASHINGTON,
Seattle, Wash., January 4, 1895.

SIR: I desire to call your attention to a matter which seems to me should be brought to the attention of Congress and some remedial legislation passed covering it.

I refer to the sale of liquor to Indians. By section 2139, Revised Statutes of the United States, it is made a crime for anyone to sell, give, etc., liquor to any Indian under the charge of an Indian agent or superintendent.

On February 8, 1887 (24 Stat. L., 388), Congress passed what is known as the "Dawes bill," providing for the allotment in severalty of the lands of certain reservations to the Indians. The sixth section of this act declares that every Indian to whom allotments have been made is a "citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizens."

The United States courts in this district and in Oregon have decided that the effect of section 6 is to emancipate the Indians from the control of the Indian agents and to make them "citizens" in the fullest sense, and that it is not a violation of section 2139, Revised Statutes, to furnish such citizens with liquor.

My contention has been, in all the cases which I have tried, that so long as the Indian remains upon the reservation over which an agent is appointed he is protected by section 2139, Revised Statutes, but this is denied by the court.

It seems to me that the policy of Congress has been to civilize these Indians, and that the allotment of land is but one step in that direction, giving them land so that by the reflection of proprietorship they may cease their wandering and become attached to one place which they can call their "home," and that they are just as susceptible to evil influences while occupying their home as they were before, and in as great danger from the liquor traffic as they were before the allotments were made, and that the same reasons exist now for prohibiting this traffic, under severe penalties, as ever existed. It has been frequently demonstrated that the allotment of land will not alone destroy the appetite for liquor, nor render the Indian any the less dangerous to himself and neighbor than he was before.

Unless this traffic is prohibited by legislation, the policy of the Government to civilize the Indian will be defeated, and he will be converted from a wandering nomad into a drunken loafer.

I tried a case to-day in the United States district court here in which a man was indicted for selling liquor to two Indians on November 29, 1894. The evidence was conclusive that the defendant sold the Indians a quart of whisky, which they drank and became so intoxicated that one of them laid down across a railroad track, where he was found by an officer, and upon being arrested his drunken companion attempted forcibly to rescue him from the officer.

These Indians testified that they lived upon lands which had been allotted to them in severalty, and the court instructed the jury to return a verdict acquitting the defendant.

I call these matters to your attention in the hope that some legislation may be had which will make the offenders liable to punishment.

Very respectfully,

WM. H. BRINKER,
United States Attorney.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, January 26, 1895.

SIR: I am in receipt of your letters of January 2, 1895, transmitting a copy of House bill 6657, "to prohibit the sale of intoxicants to Indians," as follows, on which you request the opinion of this Department:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever, or any essence, extract, biters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent; and any person who shall introduce, or attempt to introduce, any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall be punished by imprisonment for not more than two years, or by a fine of not less than one hundred dollars, for the first offense and not less than two hundred dollars for each offense thereafter, or by both fine and imprisonment, in the discretion of the court: *Provided, however,* That when the punishment shall be by fine the person convicted shall be committed until fine and costs are paid, the informers to have and receive one-half of all fines paid and collected. But it shall be a sufficient defense to any charge of introducing, or attempting to introduce, ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department, or any officer duly authorized thereunto by the War Department.

"SEC. 2. That so much of the Act of the twenty-third day of July, eighteen hundred and ninety-two, as is inconsistent with the provisions of this Act is hereby repealed."

In line 11, section 1, you suggest an amendment to the bill by inserting after the word "Government" and before the word "under" the words "or any Indian over whom the Government exercises wardship." The object of this amendment is, as you say, in order to avoid any misunderstanding as to the meaning and intent of the word "ward" as used in the bill.

In reply, I have to say that the office has experienced some considerable difficulty in dealing with Indians to whom allotments have been made under the various provisions of law touching the same on account of the duty of the Government with respect to the sale of liquor to Indians who have received allotments, the act of 1887 (24 Stat., 388), known as the general allotment act, making such Indians citizens of the United States.

It has been held by this office that Indians to whom allotments have been made, where the allotments are held in trust by the United States, and the Congress and this Department have found it necessary to maintain an agency over them for any purpose whatever, would be under the charge of the United States Indian agent within the meaning of section 2139 of the Revised Statutes as amended by the act of July 23, 1892 (27 Stats., 260), and that anyone selling or otherwise furnishing them with intoxicating liquors would be liable to punishment in like manner as they would be if the Indians had not been given their allotments.

This opinion was based on the decision of the Supreme Court in *United States v. Holliday* (3 Wall., 407) wherein it was held that the question whether "any particular class of Indians are still to be regarded as a tribe or have ceased to hold tribal relations, is primarily a question for the political departments of the Government, and if they have decided it, this court will follow their lead."

The district courts of the United States, it seems, have not, however, held this view of the case, the office having received numerous reports from its agents citing cases where the district courts have held that the making of allotments to Indians of a reservation makes them citizens of the United States and takes them out from under the charge of the agents of the United States, notwithstanding the fact that the Government maintains agencies over them. The court of the United States for the district of Washington held, in a case which was tried in the spring of 1890, that as the Puyallup Indians were citizens of the United States, the sale of liquors to them was not punishable under the Statutes, basing this opinion on the ground that the Congress and the Executive were not authorized to maintain an agency over the Indians after they had become citizens. This appears to this office to be in direct violation of the ruling of the Supreme Court in the case of *Holliday*, above cited.

The district court of the United States for Oregon, Judge Bellinger, held in the case of the *United States v. Thomas Kawkes and Edwin Kline* (none of these cases have been published, so far as I know) to the same effect, viz, that Indians who have received allotments in severalty have become citizens of the United States and are not in charge of the United States agent, and therefore the sale of liquors

to them is not prohibited by the law which is applicable only to the Indian wards of the Government.

It will be observed that the tendency of the courts below is to declare Indians who become citizens by taking allotments in severalty not to be under the Indian agent within the meaning of the law prohibiting the sale of liquors to Indians, and to be free to purchase intoxicating liquors, notwithstanding the fact that agents are maintained over them by the Government; and as the cases in which these decisions are made are of a criminal character and can not be appealed by the Government, it will be absolutely necessary for the full protection of the Indian allottees that some such legislation as is proposed in this bill shall be enacted. The making of allotments to Indians changes their status as to citizenship, but it does not change the Indian character or his tastes. As much harm, therefore, can come to an Indian allottee by the free use of intoxicating liquors as he could receive by such use as a member of a tribe, and the presence in the midst of any community of Indian allottees who would be free to purchase intoxicating liquors would be a menace to the lives and property of the law-abiding members of such community.

In a report of August 14, 1894, Capt. P. H. Ray, U. S. A., until recently the acting Indian agent of the Shoshone Agency, Wyo., says, with respect to the attitude of the courts toward this question, that if this is to be the interpretation of the law by the courts he does not think any advantage to be derived from allotments will compensate for the evil that will follow the opening of the reservation to whisky sellers, and that in their present condition it will practically destroy these people to remove them from the protection of agents and turn them over to the most lawless element on the frontier. Mr. John F. T. B. Brentano, the Indian agent for the Grand Ronde Agency, in Oregon, reported on the subject also, and expressed somewhat similar fears as to the results to the Indian allottees the decisions of the courts respecting this matter would have.

I have just recently received a letter dated Seattle, Wash., January 4, 1895, from William H. Brinker, United States district attorney for the district of Washington, inviting my attention to the decisions of the courts respecting the sale of liquors to Indian allottees, and expressing the belief that the attention of Congress should be called to the same and some remedial legislation passed covering it. He says "that unless this traffic is prohibited by legislation the policy of the Government to civilize the Indian will be defeated, and he will be converted from a wandering nomad into a drunken loafer."

Under date of October 12, 1894, the office submitted a report to the Secretary of the Interior on this bill, at the request of Hon. Thomas Lynch, of Wisconsin, and on January 18, 1895, two copies of Mr. Brinker's letter, above referred to, were transmitted to the Secretary with the request that Mr. Lynch's attention be invited to the desirability of the passage of this law, and that a copy be furnished the Committee on Indian Affairs of the Senate, with the statement that the passage of this bill, or some such legislation, is not only deemed desirable, but apparently absolutely necessary for the full protection of the Indian allottees.

With respect to the amendment which you suggest to the bill, I have to say that it would seem to be desirable that the bill should be amended in some similar manner, but I would suggest that the words offered by you be proposed after the word "agent," and before the word "and" in line 12, section 1. The reason for this is that, if the amendment were inserted at the place where you suggest, the law would not be applicable to allottees who have received allotments under the 4th section of the act of 1887, their allotments being on the public domain and outside of the jurisdiction of any United States Indian agent, but these Indians are also quasi wards of the Government, and need none the less the protecting arm of the United States.

I would also suggest an amendment to your amendment by the insertion of the words "including mixed bloods" after the word "Indian" and before the word "over." This amendment seems to be desirable, in view of the fact that there appears to be a great difference of opinion as to what an Indian is within the meaning of the laws; and also by the insertion of the words "through its political departments" after the word "government," and the substitution of the word "guardianship" for "wardship."

I inclose a copy of the bill showing how I would recommend that it be amended, and have to say, as I have once or twice before said in this letter, that I think it very desirable that Congress should, at this session, enact the same into law or pass some legislation similar to this bill.

Very respectfully,

D. M. BROWNING, *Commissioner.*

Hon. GEORGE D. MEIKLEJOHN,
House of Representatives.

(Through the Secretary of the Interior.)